

(1922) 05 AHC CK 0025**Allahabad High Court****Case No:** None

Muhammad Fatima

APPELLANT

Vs

Muhammad Mashuq Ali and
Another

RESPONDENT

Date of Decision: May 4, 1922**Acts Referred:**

- Specific Relief Act, 1877 - Section 42

Citation: (1922) ILR (All) 617**Hon'ble Judges:** Lindsay, J; Gokul Prasad, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

Lindsay and Gokul Prasad, JJ.

Although we do not agree with the reasons given by both the courts below in support of their judgments, we are nevertheless of opinion that the decree in favour of the plaintiff is substantially correct. The plaintiff is receiver in insolvency of one Abdur Rauf who was declared insolvent on the 13th of July, 1915. More than two years after the adjudication order, a sister of the insolvent, Musammat Musharraf-un-nissa, died and Abdur Rauf, as one of her legal heirs, became entitled to a two-ninths share of her estate.

2. It appears that after the death of Musharraf-un-nissa, the appellant before us managed in some way or other to have a mutation order made in her favour. It seems that she put forward a will which she said had been executed in her favour by Musharraf-un-nissa who was her aunt.

3. The receiver brought this suit asking for a declaration that a two-ninths share of the estate of Musharraf-un-nissa became the property of the insolvent, Abdur Rauf, on the lady's death and that it was saleable in satisfaction of the amount due to Abdur Rauf's creditors. It was, therefore, prayed that it might be declared that the

name of Muhammad Fatima had been entered in the revenue papers wrongly and contrary to facts.

4. Both the courts have found that the story of the will in favour of Muhammad Fatima is untrue.

5. A legal plea was raised in both the courts below, namely that the plaintiff was under an obligation to sue for possession and could, not seek mere declaratory relief under the provisions of Section 42 of the Specific Belief Act. Both the courts below overruled this contention. The learned Judge of the first court seems to have thought that because the property of an insolvent vests in the receiver, that is the same thing as the receiver's actually being in possession of the property. This view, of course, has not been supported. The learned Judge of the court below held, however, that a declaratory decree was permissible inasmuch as the declaration which was sought for would enable the receiver to sell or mortgage the property for the benefit of the creditors.

6. In our opinion the receiver was entitled to ask for declaratory relief and to obtain it. Under the provisions of the Provincial Insolvency Act (No. III of 1907) which were in force at the time the inheritance opened, all property such as may be acquired by or devolved on the insolvent after the passing of an order of adjudication and before his discharge, forthwith vests in the court or receiver and becomes divisible among the creditors in accordance with the provisions of Sub-section (2), Clause (a) of Section 16. In these circumstances we are satisfied that the plaintiff as receiver was entitled to the relief which he claimed in paragraph 8, Clause (a) of the plaint. We do not think that it can reasonably be argued that the receiver was under an obligation to bring a suit for physical possession of the insolvent's property. The result is that the appeal fails and is dismissed with costs.